IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Jagdish Prasad Vs. Sanwarmal
(S.B.Civil First Appeal No. 142/1990)

Date of judgment:- 6.11.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Akilesh Agarwal, for the appellant.
None present for the respondent.

BY THE COURT:-

1. This appeal is directed against the judgment and decree dated 16.08.1990 passed by the learned Additional District Judge, Nohar in Civil Suit No. 18/1986, whereby, the suit preferred by the plaintiff – respondent for recovery of a sum of Rs. 18,400/- against the defendant-appellant, has been decreed and the plaintiff has been further held entitled for the interest pendente lite and till the recovery of the decreetal amount @ 6% per annum.

2. The brief facts giving rise to this appeal are summarized thus:-

The plaintiff-respondent preferred the suit for recovery of an amount of Rs. 18,400/- against the defendant-appellant alleging therein that a loan of Rs. 12,000/- was advanced by the plaintiff to the defendant on

30.07.1983, accordingly, the defendant executed a promissory note and a receipt in favour of the plaintiff. It was further averred that the defendant also executed an agreement whereby, it was agreed upon that in case the defendant makes default in repayment of the loan, he would transfer his 17 bighas agricultural land out of his 53 bighas khatedari land, situated in town Ratusar, Tehsil Sardarsahar, District Churu @ 1500/- per bigha. It was stated that the agreement was executed just to ensure the repayment of the loan and in fact, the parties had no intention to sale and purchase the agricultural land. It was stated that on 23.07.1986 defendant declined to make the payment.

3. The defendant filed a written statement and contested the suit. It was inter alia stated that in the written statement that the defendant did not borrow a sum of Rs. 12,000/- from the plaintiff. It was averred that the defendant did not executed the promissory note, receipt and agreement as alleged by the plaintiff. It was further averred that the plaintiff did not advance any loan to the defendant and the promissory note is without consideration. The defendant contended that in the promissory note the time for repayment has been fixed, but, the same is not duly stamped, therefore, it is not

admissible in evidence and deserves to be impounded. Without prejudice to these averments, the defendant stated that he was engaged in sale and purchase of the cloth and for this reason, he was holding accounts with the firms, M/s. Hari Krishna Kanhaiyalal, Ahmedabad, M/s. Balaji Textile, Hanumangarh and M/s. Goyanka Cloth Store, Bhadra. The defendant averred that as on 30.07.1983, he owed a sum of Rs. 8,599.07 to M/s. Balaji Textile, Hanumangarh, a sum of Rs. 3,428/- to Hari Krishna Kanhaiyalal, Ahmedabad and a sum of Rs. 1234.88 to M/s. Goyanka Cloth Store, Bhadra. Against the aforesaid amount, an amount of Rs. 1260/- was paid by the defendant to the plaintiff who represented himself to be partner of the firm M/s Hari Krishna Kanhaiya Lal. It was stated that against the dues of the aforesaid three firms, while exerting undue pressure the plaintiff got executed some documents from the defendant . It was contended that the plaintiff had no authority to get executed the documents against the dues of the said firm. The defendant also questioned the locus standi of the plaintiff to maintain the suit for recovery of the outstanding amount on behalf of the said firms. The defendant further submitted that the document executed in favour of the plaintiff on account of existing dues of the said firms are

without consideration. The plaintiff contended that if any agreement to sell is executed then the same being executed under the undue pressure cannot be enforced.

4. On the basis of the pleading of the parties the learned Trial court framed following issues for determination:-

> "1. आया प्रतिवादी ने वादी से बमुकाम नोहर दिनांक 30-7-83 को 12,000/- रू. नकद, 1.50 पैसा सैकड़ा मासिक ब्याज दर पर उधार लेकर वादी के पक्ष में प्रोनोट व रसीद एवं इकरारनामा निष्पादित कर दिया ?
> 2. आया जबाब की मद नं0 2 में वर्णित हालात में किन्ही तीन फर्मों का हिसाब में मुबलिंग 13,261.95 रूपये बकाया बतलाकर तथा फर्म हरीकृष्ण कन्हैयालाल के अपने आप को पार्टनर बतलाकर वादी ने 1260/- रू. प्रतिवादी से वसूल कर लिए तथा दबाव नाजायज डालकर शायद लिखापढ़ी करवा ली गयी थी। अत: उक्त हालात में लिखापढ़ी बिला बदल है। यदि ऐसा है तो इसका वाद पर क्या असर है?
> 3. आया वादी को उक्त तीनों फर्मों के कर्जे की वसूली करने का अधिकार प्राप्त नहीं है और उसको दावा पेश करने की Locus Standi नहीं है?
> 4. सहायता ।"

In support of his case, the plaintiff Shri Sawar Mal himself appeared as witness PW1 and got examined two more witnesses viz. Shri Chauth Mal PW2 and Shri Lichchhi Ram PW3. The defendant Shri Jagdish himself appeared as witness DW3 and also got examined Shri Mahavir Prasad and Jaina Ram as witnesses DW1 and DW2 respectively. The plaintiff also produced the documentary evidence promissory note dated 30.07.1983 (Ex. 1), receipt dated 30.07.1983 (Ex. 2), agreement dated 30.07.1983 (Ex. 3) and the extracts from the register regarding the entry of

the loan advanced (Ex. 4/A). The defendant produced the copy of the settled account of the firms said to be in the hand-writing of the plaintiff (Ex. A/1).

5. After hearing the counsel for the parties to the suit and due consideration of the evidence on record, the learned trial court arrived at the finding that as on 30.07.1983, a loan of Rs. 12,000/- was advanced by the plaintiff to the defendant on interest @ 1.5% per month and promissory note (Ex. 1), receipt (Ex. 2) and agreement (Ex. 3) were executed by the defendant in favour of the plaintiff. Regarding the objection of the defendant that the promissory note(Ex.1)is not properly stamped and therefore, not admissible in evidence, the learned trial court observed that since no issue has been framed regarding the admissibility of the promissory note in evidence and since the factum of loan being advanced stands proved, the objection raised by the defendant has no merit.

The contention of the defendant that the promissory note executed is without consideration, has been rejected by the trial court saying that the details of account Ex. A/1 produced on record does not bear signature of the plaintiff, his name or the date of the settlement of the account and further there is no evidence establishing that the plaintiff is

agent of the said firms, therefore, the account Ex.A/1 cannot be held to be related to the plaintiff. The learned trial Court further observed that in absence of any deposition regarding existence of any receipt regarding payment of Rs.1,260/-, the oral evidence of D.W.1 Mahavir Prasad and D.W. 2 Jaina Ram has no evidentiary value. Accordingly, the learned trial court decided all the issues in favour of the plaintiff and against the defendant, consequently, decreed the suit in favour of the plaintiff as indicated above.

6. None has appeared despite due service, on behalf of the respondent. Therefore, I have heard the matter ex parte.

7. I have heard the learned counsel for the appellant and considered his submissions and have also perused the record of the case.

8. In the first instance, it is contended by the learned counsel for the appellant that the learned trial court has seriously erred in not deciding the objection of the plaintiff questioning the admissibility of promissory note (Ex.1) in evidence on account of want of proper stamp, notwithstanding the fact that an objection was raised on behalf of the defendant before the learned trial Court at the relevant time when the said document was being

exhibited in evidence . The learned counsel has drawn attention of this Court to the statement of P.W. 1 Sawar Mal wherein it has been specifically recorded that the said document is admitted in evidence subject to objection of the defendant. Therefore, the learned trial Court while deciding the suit, was under an obligation to pronounce on the objection raised by the plaintiff regarding admissibility of the said document. The learned counsel urged that the learned trial court has committed a gross and palpable error in holding that since no issue has been framed on the admissibility of the promissory note in evidence, therefore, the objection raised by the defendant has no merit. The learned counsel further contended that admittedly under the promissory note (Ex.1) the date for repayment has been fixed, therefore, it was required to be properly stamped and undisputedly on the said promissory note the proper stamps have not been affixed, therefore, the said promissory note could not have been admitted in evidence and the suit preferred based on such promissory note must fail.

The learned counsel submits that the said document cannot be admitted in evidence even on payment of the deficit stamp duty. Therefore, viewed from any angle the suit preferred by the plaintiff was liable to be rejected on

this count alone. In this regard the learned counsel relied upon the judgment of this court in the matters of Hanuman vs. Fattu, AIR 1967 Raj. 235, Shivraj & Anr. vs. Ram Swaroop (1986 R.L.R., 1) and the decision of the Hon'ble Supreme Court in the matter of Ram Ratan (dead) by legal representatives vs. Bajrang Lal & Ors.(AIR 1978 SC 1393).

It is next contended by the learned counsel that the promissory note executed was without consideration inasmuch as no amount was paid by the plaintiff to the defendant as indicated in the promissory note (Ex. 1). As a matter of fact, the said promissory note and other documents were got executed by the plaintiff so as to settle the account of the firms M/s. Hari Krishna Kanhaiyalal, Ahmedabad, M/s. Balaji Textile, Hanumangarh and M/s. Goyanka Cloth Store, Bhadra. The learned counsel submitted that out of the total dues of three firms Rs. 13,261.95, an amount of Rs. 1260/- was paid by the defendant to the plaintiff and an amount of Rs. 12,000/- remained outstanding. It is contended that the said amount outstanding was against the accounts of the said firms and the plaintiff had no right to prefer the suit for recovery of the dues of the said firms. The learned counsel pointed out that the payment of Rs. 1260/- stands proved by the oral deposition of the PW2 and PW3 as well. The

plaintiff has not made any cross-examination regarding the payment of the Rs. 1260/- by the defendant to the plaintiff. Therefore, on account of omission to cross-examine the witness, the testimony of the said witness cannot be disputed. In this regard the learned counsel relied upon the Bench decision of this court in the matter of State vs. Bhola Singh,(1969 Raj. , 219).

The learned counsel contended that due amounts of the said firms on account of business transactions stand proved on the basis of the Ex.A/1 as well which is in the plaintiff's own hand-writing. The learned counsel submitted that the learned Trial court has committed and discarded said evidence saying that it does not bear the signature of the plaintiff. As a matter of fact, so as to compare the hand-writing of the plaintiff the learned trial court got transcribed the last entries in the Ex.A/1 from the plaintiff which is on record and if said writings are compared with the hand writing in Ex.A/1, then, it is apparent that both the hand-writings are of the same person. The learned counsel contended that it was the duty of the learned trial court to compare the disputed writings with the admitted writings to ascertain whether the writing is that of the person by whom it proposed to have been written. In this regard the learned counsel relied upon the decision of the

Hon'ble Supreme Court in the matter of Murarilal Vs. State of M.P. ,(AIR 1980 SC, 531).

9. It is to be noticed that the suit preferred by the plaintiff was not solely based on the promissory note (Ex.1). It has been specifically averred in the plaint by the plaintiff that against the loan advanced , a promissory note (Ex.1), a receipt (Ex.2)and an agreement to sell (Ex3) were executed by the defendant in his favour . It is stated that the agreement was executed just to ensure the repayment of loan and in fact the parties had no intention to sale and purchase the agriculture land . In his oral deposition, the plaintiff has stated that the documents were drafted by Lichchhi Ram , petition writer, in presence of Manphool Ram and Chauth Mal. The documents also bear signatures of Shri Lichchhi Ram, Chauth Mal and Manphool Ram. P.W. 2 Chauth Mal and P.W. 3 Lichchhi Ram in their oral deposition have admitted their signatures on the said document. That apart, the execution of the documents has not even been denied by the defendant Jagdish Prasad. He has admitted in his cross examination in unequivocal terms that the promissory note (Ex.1) receipt(Ex.2) and agreement (Ex.3) were executed in favour of the plaintiff. Thus, the stand taken by the defendant in the written statement that since he has not

taken any cash loan , therefore, the question of execution of promissory note, receipt and agreement does not arise, stands belied.

10. There is no quarrel with the proposition of law that when a document is tendered in evidence by the plaintiff and an objection is raised by the defendants that the document is inadmissible in evidence as the same is not duly stamped , it is obligatory upon the trial court to decide the objection raised in accordance with law. Moreover, when the document is admitted in evidence subject to objections of other party to the suit and the decision on admissibility of the document is postponed then, before the suit is finally disposed of , the trial court is under an obligation to pronounce on the objection raised regarding admissibility of the document. Thus, the learned trial Court has erred in not deciding the objection on the ground that no issue has been framed on the objection raised.

There is no quarrel with this proposition as well that a promissory note wherein the time is fixed for repayment of the loan, if not duly stamped, is not admissible in evidence. But, then in the instant case, the suit preferred by the plaintiff is not solely based on the promissory note executed by the defendant in his favour. The factum of loan being advanced by the petitioner to the defendant

stands proved by other documents on record viz. the receipt(Ex.2) and the agreement (Ex.3) admissibility in evidence whereof is not even disputed. That apart, the advancement of the loan by the plaintiff to the defendant and execution of the documents stands duly proved by oral evidence. As noticed above, the execution of the documents even stands admitted by the defendant. Thus, factum of loan advanced having been proved on the basis of other evidence on record , nothing turns on the question that the promissory note executed by the defendant in favour of the plaintiff is not duly stamped and therefore, the same is not admissible in evidence. In this view of the matter, the judgments relied upon by the learned counsel does not help the appellant in any manner.

11. The next question raised by the learned counsel appearing on behalf of the plaintiff is that the documents executed were without consideration. It is contended by the learned counsel that no cash loan was advanced by the plaintiff to the defendant, as a matter of fact, an amount of Rs. 1,260/- was paid to the plaintiff against the settlement of the accounts of three firms referred supra and against the remaining amount, a sum of Rs.12,000/-, the dues of the three firms, the plaintiff got executed the documents in his favour by exerting undue pressure. The contention of

the plaintiff in this regard has been rejected by the learned trial court on the ground that the document (Ex.1) relied upon by the defendant said to be the details of the account of the three firms represented by the plaintiff does not bear his signature, his name and the date of settlement of account. The learned trial Court also arrived at the finding that there is no evidence to establish that the plaintiff is an agent of the said firms.

12. The learned counsel is right in contending that the learned trial Court could have compared the disputed writings (Ex.A/1) with the admitted and proved writing (the last entries of the said account got transcribed by the Court from the plaintiff). In this regard, the provisions of Section 73 of Evidence Act are self explanatory. But, in the instant case, even if it is assumed that the entries in Ex.A/1 are in the hand writing of the plaintiff, then this fact by itself is not sufficient to prove that the plaintiff was working as an agent of all the three firms and the said settlement of the account relates to the transaction in question. The learned trial court has not erred in discarding the said evidence on the ground that it does not bear the signature or the name of the plaintiff and also does not bear the date on which those entries were made. It is true that regarding the payment of Rs.1,260/-, no question has

been put to the witnesses D.W.1 and D.W. 2 . But, a specific question in this regard was put to the defendant himself who appeared as a witness D.W. 3 in response whereof, he has stated that he has not taken any receipt regarding the payment of Rs.1,260/-. Nothing prevented the defendant to produce the best evidence available to prove that he was engaged in regular transactions of purchase of cloth from the said firms and the plaintiff was working as an agent of the said firms. No evidence whatsoever has been placed on record showing the business transactions by the defendant with the said firms. In this view of the matter, solely on the basis of Ex.A/1 which do not bear the signature of the plaintiff and the date of the settlement of the account , it cannot be presumed that the said account relates to the plaintiff and the transaction of loan advanced in question. Thus, in absence of any cogent evidence on record, it cannot be said that the documents executed in favour of the plaintiff by the defendant are without consideration. No evidence whatsoever has been laid to establish that said documents were got executed by the plaintiff by exerting undue pressure.

13. In view of the discussion above, in my considered opinion, the learned trial Court has committed no error in

deciding issue no. 1 in favour of the plaintiff and against the defendant and issue nos. 2 and 3 against the defendant and in favour of the plaintiff.

14. In the result, the appeal fails and it is hereby dismissed with no order as to costs.

(SANGEET LODHA),J.